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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009  
(Filed April 13, 2006)

**ASSIGNED COMMISSIONER'S RULING:  
PHASE 1 AMENDED SCOPING MEMO  
AND  
REQUEST FOR COMMENTS ON FINAL  
STAFF RECOMMENDATIONS**

On October 5, 2006, the Commission issued an Order Amending Order Instituting Rulemaking in this proceeding (Amended OIR). The Amended OIR designated this proceeding as the Commission's procedural forum for the implementation of Senate Bill (SB) 1368. It also amended the list of Respondents and service list in this proceeding to encompass a broader group of load-serving entities, consistent with the definition of that term in SB 1368. Today's ruling modifies my June 1, 2006 Scoping Memo for Phase 1 in order to accommodate these changes.<sup>1</sup>

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<sup>1</sup> Assigned Commissioner's Ruling: Phase 1 Scoping Memo and Notice of Workshop on Interim Greenhouse Gas Emissions Performance Standard, June 1, 2006.

## **1. Implementation of SB 1368**

Attachment 1 presents a summary of the provisions of SB 1368. Briefly, this new law requires that the greenhouse gas (GHG) emissions for any baseload generation commitments of five years or more not exceed the rate of GHG emissions for combined-cycle natural gas baseload generation. As stated in the Amended OIR, this proceeding is the Commission's procedural forum for the implementation of SB 1368. Accordingly, the Commission will need to consider staff's final recommendations as well as parties' comments on those recommendations in the context of this new law. All parties providing written comments/legal briefs, as scheduled below, should specifically discuss the implications of SB 1368 on Phase 1 policy and implementation issues.

## **2. Revised Schedule**

On October 2, 2006, The Division of Strategic Planning ("staff") submitted its final Phase 1 workshop report, including final staff recommendations on how the Commission should design and implement a GHG emissions performance standard ( or "standard"). This report, entitled *Final Workshop Report: Interim Emissions Performance Standard Program Framework*, has been posted on the Commission's website at [www.cpuc.ca.gov/state/energy/electric/climate+change](http://www.cpuc.ca.gov/state/energy/electric/climate+change).

The schedule presented in my June 1, 2006 scoping memo did not provide an additional opportunity to comment on the final staff workshop report/recommendations. This is because respondents and interested parties already had an opportunity to comment on the interim staff recommendations/workshop report, and would also be able to comment on the Commission's draft decision as it considers staff's final recommendations. However, given the passage of SB 1368 and broadening of Respondents

subsequent to that ruling, I am now extending the Phase 1 schedule to afford all Respondents and interested parties the opportunity to comment on Phase 1 issues in the context of SB 1368 prior to the issuance of a draft decision, as follows:<sup>2</sup>

Phase 1 Staff Recommendations/Workshop Report (Final)	<b>October 2, 2006</b>
Opening Comments/Legal Briefs	<b>October 18, 2006</b>
Reply Comments/Legal Briefs	<b>October 27, 2006</b>
Draft Decision Issued	<i>estimated mid-December</i>
Comments on Draft Decision	<b>20 days from issuance</b>
Reply Comments on Draft Decision	<b>five days thereafter</b>

In addition, I am providing respondents and interested parties a separate opportunity to respond to Section B and related attachments presented by the Center For Energy and Economic Development (CEED) in their September 8, 2006 comments on the draft workshop report. These portions of CEED's September 8, 2006 comments contain supplemental arguments and documents related to the Commerce Clause issues that CEED initially raised in its June 30, 2006 opening brief. *Written replies to CEED's supplemental material on Commerce Clause issues are due by November 1, 2006.*

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<sup>2</sup> By letter dated September 25, 2006, the Assigned Administrative Law Judge also informed all the new Respondents added by the Amended OIR of this revised schedule, as well as how to access relevant Phase 1 documents submitted to date, so that they could fully participate in developing the Commission's record for Phase 1. A copy of this correspondence was also sent electronically to the service list in this proceeding.

As discussed in the Amended OIR, the Commission's final decision in Phase 1 will be issued by February 1, 2007 in compliance with the statutory deadline set forth in SB 1368.

In consultation with the assigned Administrative Law Judge and Commission staff, I will establish a process for consulting with the California Energy Commission, the California Air Resources Board and the Independent System Operator, as directed by the statute.

### **3. Direction for Comments/Legal Briefs**

In the October 18, 2006 filings, Respondents and interested parties are invited to comment on any Phase 1 policy, legal or implementation issue(s) within the scope of this proceeding, but should specifically address staff's final recommendations and any alternative design parameters you propose for a GHG emissions performance standard in the context of the requirements of SB 1368.

In particular, you should discuss whether you believe staff's proposed standard is fully consistent with those requirements or not, and why. For example, you should comment on whether the small size exemption recommended by staff comports with the requirements of the new law. If you propose alternate design parameters for the standard, you should discuss how they are fully consistent with SB 1368. In addressing these issues, you may provide your legal analysis of the statute in an accompanying legal brief. The full text of SB 1368 can be accessed at [www.leginfo.ca.gov](http://www.leginfo.ca.gov), and Attachment 1 presents a summary of the provisions of this new law.

In addition, the opening comments should include your assessment of the effects of staff's recommendations, as well as any alternatives you may propose,

on “system reliability and overall costs to electricity customers.”<sup>3</sup> More specifically, present your views on how the Commission should design and implement the standard required by SB 1368 in light of these reliability and cost considerations. In doing so, identify the specific design parameters of the staff proposal or your recommended alternatives that, in your view, address these considerations appropriately.

You may also address other legal issues that have been raised in this proceeding in a brief, such as Commission jurisdictional issues and the applicability of a performance standard to Qualifying Facilities. With respect to the former, it appears to the assigned Administrative Law Judge that SB 1368 makes it clear that the Commission has the jurisdiction to apply a GHG performance standard on all the load-serving entities defined in that statute, including energy service providers and community choice aggregators. If your opinion differs, provide legal arguments supporting your position in a brief.

Any party that contends that Public Utility Regulatory Policy Act (PURPA) prevents or limits this Commission from imposing the standard on utility contracts with Qualifying Facilities must address in its comments provisions in PURPA<sup>4</sup> which may: (1) revise purchase obligations for new facilities and limit the purchase obligations to new facilities that meet the new criteria for qualifying cogeneration facilities established pursuant to subsection (n); and (2) allow the termination of the mandatory purchase and sale requirements. Such parties should explain why and how their arguments are consistent with these

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<sup>3</sup> Section 8341(d)(6) of the Public Utilities Code, added by SB 1368.

<sup>4</sup> Specifically, 16 USC 824a-3(m)(1), (m)(2), and (n).

provisions. Such parties should also specifically address how subsections (m)(2) and (n) will affect facilities other than cogeneration facilities. Any other parties who wish to may also address these issues.

In addition, I am soliciting further comment to augment the record on how the Commission should calculate a credit for cogeneration thermal load, consistent with the provisions of SB 1368. As described in the final staff report, alternatives were presented for Commission consideration during workshops and in post-workshop comments, but there is no consensus on the appropriate formula/approach. I note that SB 1368 specifically directs the Commission to adopt an “output-based methodology” for this purpose.<sup>5</sup> Parties that have taken a position on this issue in their pre- or post-workshop comments, or that choose to comment on this issue for the first time in their October 18 opening comments, should specifically address the issues discussed in Attachment 2.

If you have submitted comments or legal briefs previously on Phase 1 issues, your October 18 filings should present your final position on those matters and be presented in the form of a single set of comments/legal briefs designed to supercede all previously submittals. If your positions on specific policy, legal or implementation issues have not changed, you may so indicate and (1) attach excerpts of the language discussing the issue from your prior Phase 1 submittals to the October 18 filing or (2) reference that language in the October 18 filing by providing the submittal title, date and page number, as appropriate.

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<sup>5</sup> Section 8341(d)(3) of the Public Utilities Code, added by SB 1368.

Your October 27, 2006 reply comments should respond specifically to the positions and arguments presented in other parties' opening comments. They should not present your positions on Phase 1 issues for the first time. Those should be described in your opening comments, as discussed above.

With respect to the November 1 replies to CEED's supplemental filing on Commerce Clause issues (see Section 2 above), those submittals should address/include the following: effects on interstate commerce, the *Pike* balancing test, and any potential extraterritorial reach. Parties may also submit supporting reports or declarations on these issues.

Anyone who is unfamiliar with Commission procedures, and needs help in understanding them, may contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY-toll free) or (415) 703-5282 (TTY), or send an email to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**IT IS RULED** that:

1. In addition to the purposes set forth in my June 1, 2006 Scoping Memo, Phase 1 will also serve as the Commission's procedural forum for implementing the provisions of Senate Bill 1368.
2. The Phase 1 schedule is modified as described herein.
3. As discussed in today's ruling, opening comments/legal briefs on the report entitled *Final Workshop Report: Interim Emissions Performance Standard Program Framework* and related Phase 1 issues are due by October 18, 2006. Reply comments/legal briefs are due by October 27, 2006. Respondents and interested parties that choose to comment are required to follow the direction provided in today's ruling with respect to those submittals.

4. As discussed in today's ruling, opening comments/legal briefs on the report entitled *Final Workshop Report: Interim Emissions Performance Standard Program Framework* and related Phase 1 issues are due by October 18, 2006. Reply comments/legal briefs are due by October 27, 2006. Respondents and interested parties that choose to comment are required to follow the direction provided in today's ruling with respect to those submittals.

5. This ruling shall be served on the service list in this proceeding, as amended by the Order Amending OIR issued on October 5, 2006.

6. As discussed in this ruling, parties who receive a request for copies of previous filings in this proceeding should respond within one day.

7. Service of documents in this proceeding shall be made by electronic service pursuant to the Electronic Service Protocols contained in Attachment 4 of the April 13, 2006 OIR and consistent with the Commission's Rules of Practice and Procedure 1.9 and 1.10. In addition, a hard copy of all documents shall be mailed to the Assigned Administrative Law Judge(s) and Assigned Commissioner.

Dated October 5, 2006, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner



## ATTACHMENT 1

### Summary of SB 1368: GHG Performance Standard

SB 1368 adds Chapter 3, commencing with § 8340, to Division 4.1 of the Public Utilities Code. Section references below are to those new Public Utilities Code sections (or other sections of the existing code that the statute refers to).

#### *1. What does the statute direct/authorize the Commission to do?*

- Directs the Commission to establish a GHG emission performance standard (“standard”) for all baseload generation of load-serving entities. [§ 8341(d)(1)]
- Prohibits the Commission from approving long-term financial commitments by an electrical corporation unless any baseload generation supplied under that commitment complies with the standard. [§ 8341(b)(1)]
- Authorizes the Commission to review (“may review”) any long-term financial commitment proposed to be entered into by an electric service provider or community choice aggregator in order to enforce the statute’s requirements. [§ 8341(b)(2)]
- Requires the Commission to adopt rules to enforce these requirements for all load-serving entities. [§ 8341(b)(3)]
- Requires the Commission to adopt procedures, for all load-serving entities, to verify the emission of GHGs from any baseload generation supplied under a contract subject to the standard. [§ 8341(b)(3)]
- Authorizes the Commission (“Commission may”) to approve an increase from one-half to one percent in the return on investment by a third party entering into a long-term financial commitment through a contract approved by the Commission for electricity generated by zero- or low-carbon generating resources. [§ 8341(b)(6)]

--“zero- or “low-carbon” generating resource” is defined as an electrical generating resource that will generate electricity while producing

emissions of greenhouse gases at a rate substantially below the greenhouse gas emission performance standard, as determined by the Commission. [§ 8341(n)]

2. *By when and how must the Commission act?* [§ 8341(d)(1), (6)]

- The Commission shall establish the performance standard *on or before February 1, 2007*.
- The Commission shall establish the standard in consultation with the Energy Commission and the State Air Resources Board.
- In adopting and implementing the standard, the Commission shall consider the effects of the standard on system reliability and overall costs to electricity customers, in consultation with the Independent System Operator.
- The Commission shall establish the standard through a rulemaking proceeding.
- The Commission may consider an increase in the return on investment provided for under § 8341(b)(6) only “after a hearing.”

3. *To whom will the Commission-adopted standard apply?* [§ 8340(c), (d), (e) and (h)]

- Any load-serving entity, defined as “every electrical corporation, electric service provider, or community choice aggregator serving end-use customers in the state”, and the statute specifies the following definitions of these terms:

--“Electrical corporation” as defined in Section 218.” [§ 8340(d)]

--“Electric service provider” as defined in Section 218.3 but does not include corporations or persons employing cogeneration technology or producing electricity from other than a conventional power source consistent with subdivision (b) of § 218. [§ 8340(e)]

--Community choice aggregator as defined in § 331.1. [§ 8340(c)]

4. *What does the statute direct with respect to the design/development of the standard?*

Standard applies to baseload generation:

- The standard will apply to *baseload generation*, defined as “electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.” [§ 8340(a)]
  - “Powerplant” means a facility for the generation of electricity and includes one or more generating units at the same location, [§ 8340(m)] and
  - “Plant capacity factor” means the ratio of the electricity produced during a given time period, measured in kilowatthours (kwhs), to the electricity that the unit could have produced if it had been operated at its rated capacity during that period, expressed in kwhs. [§ 8340(l)]

Standard is based on emissions of combined cycle natural gas turbine:

- The standard for all baseload generation of load-serving entities will be at a rate of emissions of GHG that is no higher than the rate of emissions for combined-cycle natural gas baseload generation.
  - Enforcement of the standard begins immediately upon establishment of the standard;
  - All combined-cycle natural gas powerplants that are in operation, or that have an Energy Commission final permit decision to operate as of June 30, 2007, shall be deemed to be in compliance with the GHG performance standard. [§ 8341(d)(1)]

Standard applies to long-term financial commitments:

- The standard will apply to *long-term financial commitments*, meaning *either* a new ownership investment in baseload generation *or* a new or renewed contract *with a term of five or more years*, which includes procurement of baseload generation (as defined above). [§ 8341(a); 8340(j)]

- In determining whether a long-term financial commitment is for baseload generation, the Commission shall consider the design of the powerplant and intended use of the powerplant, as determined by the Commission based upon the electricity purchase contract, any certification received from the CEC, any other permit or certificate necessary for the operation of the powerplant, including a certificate of public convenience and necessity, any procurement approval decision for the load-serving entity, and any other matter the Commission determines is relevant under the circumstances. [§ 8341(b)(4)]
- In developing and implementing the standard, the Commission shall address long-term purchases of electricity from *unspecified sources* "in a manner consistent with this chapter." [§ 8341(d)(7)]

GHG emissions rate of baseload generation should be determined as follows:

- In determining the rate of GHG emissions for baseload generation, the Commission shall include the net emissions resulting from the production of electricity by the baseload generation. [§ 8341(d)(2)]
  - For facilities generating electricity from biomass, biogas, or landfill gas energy, the Commission shall consider net emissions from the process of growing, processing and generating the electricity from the fuel source. [§ 8341(d)(4)]
  - The Commission shall establish an "output-based methodology" to ensure that the calculation of emissions of greenhouse gases for cogeneration recognizes the total usable energy output of the process, and includes all GHGs emitted by the facility in the production of both electrical and thermal energy. [§ 8341(d)(3)]
- "output based methodology" means a GHG emission performance standard that is expressed in pounds of GHGs emitted per megawatthour (MWh) and factoring in the useful thermal energy employed for purposes other than the generation of electricity. [§ 8340(k)]

- Carbon dioxide that is injected in geological formations, so as to prevent releases into the atmosphere, in compliance with applicable laws and regulations shall not be counted as emissions of the powerplant in determining compliance with the greenhouse gases emissions performance standard. [§ 8341(d)(5)]

Alternate compliance available for multi-jurisdictional electrical corporations:  
[§ 8341(d)(9)]

- An electrical corporation that provides electric service to 75,000 or fewer retail end-use customers in California may file with the commission a proposal for alternative compliance with this section, which the Commission may accept upon a showing by the electrical corporation of *both of the following*:
  - A majority of the electrical corporation's retail end-use customers for electric service are located outside of California, and
  - The emissions of GHGs to generate electricity for the retail end-use customers of the electrical corporation are subject to a review by the utility regulatory commission of at least one other state in which the electrical corporation provides regulated retail electric service.

Other implementation/design guidance:

- In developing and implementing the GHG emission performance standard, the Commission shall consider and act in a manner consistent with any rules adopted pursuant to Section 824a-3 of Title 16 of the United States Code. [§ 8341(d)(8)]
- Through a rulemaking proceeding and in consultation with the California Energy Commission and the State Air Resources Board, the Commission shall reevaluate and continue, modify, or replace the GHG performance standard when an enforceable GHG emissions limit is established and in operation, that is applicable to load serving entities. [§ 8341(g)]

5. *What else is directed in the statute?*

- Parallel provisions for the California Energy Commission to establish a performance standard for all baseload generation of local publicly-owned electric utilities. This standard is due on or before June 30, 2007, and to be developed in consultation with the Commission and the Air Resources Board. [§ 8341(e)(1)-(9), (f)]

**(END OF ATTACHMENT 1)**

## ATTACHMENT 2

### **Emission Credits for Cogeneration (or Combined Heat and Power): Direction for Further Comment**

A variety of methods have been used to provide emissions credits for combined heat and power (CHP) facilities in state air quality regulations for conventional pollutants. These methods can be adapted to create an output-based method to calculate an appropriate emission rate for CHP facilities. Two of the leading options are: (a) to give credit to the electrical generator for the actual or estimated *emissions avoided* on the thermal side, or (b) to give credit to the generator for the btus delivered to the thermal side by converting those btus into electrical equivalents *at the heat rate of the generator*. Variants can be developed for either of these approaches. There may be other approaches the Commission should consider as well in Phase 1 of this proceeding.

Under the “emissions avoided” approach, calculating the compliance of an individual CHP unit requires either knowing or estimating the avoided emissions that a conventional boiler system would otherwise emit had it provided the same thermal output. When a new CHP system is replacing an existing boiler, this rate can be based on the boiler’s historic emission rate. For a new CHP system or in the case in which the avoided thermal system emissions cannot be determined, that emissions rate must be estimated. Some air regulations assign the locally-permitted emission rates of new gas boilers.

Under the second approach, the thermal resource delivered to the thermal host is converted “back” into its electrical output equivalent at the heat rate of the generator itself. Here there is an important distinction between the entire heat output of the generator, and the fraction of that heat that is actually used by the thermal host. Parties at the workshops presented a proposed output-based method based on this approach.<sup>1</sup> One sub-issue in using this method is whether

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<sup>1</sup> Energy Producers and Users Coalition and Cogeneration Association of California distributed a three-page handout entitled “Emissions Calculation for Cogeneration” at the workshop in order to facilitate dialog among interested parties on this issue in post-workshop comments. The handout is posted on the Commission’s website at

*Footnote continued on next page*

the credit should be calculated at the overall heat rate of the generator, or at the “conversion factor” recommended by these parties.

I invite further comment on how the Commission should calculate emissions from CHP facilities under the GHG emissions standard. Those parties commenting on this issue should address the following *in opening comments*:

- If you support an "emissions avoided" approach for this calculation, discuss the specific method you recommend (and why) for estimating the avoided emissions rate for a replacement system, a new system, or for the case in which the avoided thermal system emissions cannot be determined.
- If you support the "conversion" approach discussed above, discuss its advantages relative other approaches. Present the formula/method you recommend for this calculation with specific discussion of the source of assumption(s) the Commission should use for the fraction of the heat that is actually used by the thermal host, and why. Discuss how and why your recommended formula is similar/different from the calculation methodology presented by Energy Producers and Users Coalition and Cogeneration Association of California.
- If you support an alternate approach to the two described above, present similar detail on the methodology/formula you recommend and discuss why you believe your proposal approach and CHP credit calculation is superior.
- Discuss whether and how proposed calculations (including your own) satisfy the statutory requirement for an output-based methodology, as well as the overall objectives of SB 1368.
- Discuss the effect of different approaches with respect to ultimate GHG emissions, and

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[www.cpuc.ca.gov/static/energy/electric/climate+change/cogen+calculationpresentation.pps](http://www.cpuc.ca.gov/static/energy/electric/climate+change/cogen+calculationpresentation.pps).



- Discuss the administrative ease or burdens of the different approaches that could be adopted in this proceeding, including the one that you recommend.

**(END OF ATTACHMENT 2)**

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the Notice of Availability is current as of today's date.

Dated October 5, 2006, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

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